

Applicant : Shafiq M. Jamal et al.
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 16 of 30

Attorney's Docket No.: MP0430 / 13361-083001

REMARKS

I. Introduction

In response to the Office Action dated August 18, 2005, claims 5-7, 9, 13, 21-23, 26, 30, 38-40, 42, 44, 46, 50, 67-69, 72 and 76 have been amended so as to further clarify the claimed invention. Support for these amendments can be found, for example, in Fig. 4-5 and 7-9, and their corresponding sections of the specification. No new matter has been added.

For the reasons set forth below, Applicant respectfully submits that all pending claims are patentable over the cited prior art references.

II. The Rejection Of Claims 56 and 59 Under 35 U.S.C. § 112, First Paragraph

Claims 56 and 69 are rejected under 35 U.S.C. §112, first paragraph as failing to comply with the enablement requirement. Specifically, the Examiner asserts that no inventive embodiment is found to describe an oscillator having a predetermined oscillation frequency being claimed. This rejection is respectfully traversed.

Lack of enablement under the first paragraph of 35 U.S.C. §112 is *a question of law*. *U.S. Steel Corp. v. Philips Petroleum Co.*, 865 F.2d 1247, 9 USPQ2d 1461 (Fed. Cir. 1989); *U.S. v. Electronics Inc.*, 857 F.2d 778, 8 USPQ2d 1217 (Fed. Cir. 1988). In rejecting a claim under the first paragraph of 35 U.S.C. §112 for lack of adequate enabling support, it is incumbent upon the Patent and Trademark Office (PTO) to establish a basis in fact and/or cogent technical reasoning to support the legal conclusion that one having ordinary skill in the art would not be able to practice the claimed invention *armed with the supporting specification* without undue experimentation. *In re Brana*, 51 F.3d 1560, 34 USPQ2d 1436 (Fed. Cir. 1995); *In re Marzocchi*,

Applicant : Shafiq M. Jamal et al..
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 17 of 30

Attorney's Docket No.: MP0430 / 13361-083001

439 F.2d 220, 169 USPQ 367 (CCPA 1971). It should be emphasized that a patent disclosure is directed to *one having ordinary skill in the art*. *In re Howarth*, 654 F.2d 103, 210 USPQ 689 (CCPA 1981).

Moreover, and quite significantly, it has been repeatedly held that the scope of enablement varies inversely with the degree of predictability in the art, i.e., enablement is a function of complexity of the involved subject matter. *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 15 USPQ2d 1321 (Fed. Cir. 1990); *U.S. v. Telectronics Inc.*, supra. Applicant stresses that a patent specification is *presumed enabling* in the absence of a reason to doubt the objective truth of the statements contained therein. *In re Brana*, supra.; *In re Marzocchi*, supra.

Applying the above legal rules, Applicant respectfully submits that the PTO has not established a *prima facie* basis to deny patentability to the claimed invention under the first paragraph of 35 U.S.C. §112 for lack of adequate enabling support. Merely offering a conclusion of lack of enablement does not overcome the judicially established presumption that the present disclosure is, in fact, enabling. *In re Brana*, supra.; *In re Marzocchi*, supra. Exacerbating the lack of any basis to challenge the enablement of the claimed invention, there is a sound technical basis upon which to predicate the conclusion that one having ordinary skill in the art would, indeed, be able to practice the claimed invention armed with the supporting specification without undue experimentation.

In the instant case, it is not apparent and the Examiner has not offered any basis upon which to predicate the legal conclusion that *one having ordinary skill in the art* would not have

Applicant : Shafiq M. Jamal et al.
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 18 of 30

Attorney's Docket No.: MP0430 / 13361-083001

been able to practice the claimed invention armed with the supporting specification. It should be reminded that examiners are *not* considered as one having ordinary skill in the art.

By contrast, as readily set forth at page 6, paragraph [0013], lines 11-13 of the specification, the load circuit can include a voltage controlled oscillator operable to generate an output signal have a predetermined oscillation frequency. Further, at page 7, paragraph [0016], lines 4-7, a noise suppression circuit can be provided to suppress noise for any load circuit that requires a constant current input, such as a voltage regulator loop, voltage reference generator or voltage controlled oscillator. This is expressly recited in claims 56 and 69; namely, "a voltage regulator includes a voltage controlled oscillator operable to generate an output signal having a predetermined oscillation frequency," and "the loading means includes a voltage controlled oscillator means for generating an output signal having a predetermined oscillation frequency."

Accordingly, it is respectfully submitted that a noise suppression circuit, coupled with a voltage controlled oscillator or voltage controlled oscillator means, for suppressing undesired noise can readily be achieved in view of the description set forth in the specification.

It should be reminded that, in rejecting a claim under the first paragraph of 35 U.S.C. §112 for lack of adequate descriptive support, the PTO is charged with the initial burden of establishing a basis upon which to conclude that one having ordinary skill in the art would not have *reasonably recognized* from the originally filed disclosure that Applicant had possession of the now claimed invention. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976). That can *not* be discharged by merely asserting a lack of *ipsis verbis* support in the specification for claim language. *Wang Laboratories, Inc. v. Toshiba Corp.*, 993 F.2d 858 26 USPQ2d 767

Applicant : Shafiq M. Jamal et al.
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 19 of 30

Attorney's Docket No.: MP0430 / 13361-083001

(CAFC 1993). Rather, the issue generated by a rejection under the first paragraph of 35 U.S.C. §112 for lack of adequate descriptive support is whether the *concept* embodied in a claim was originally disclosed. *In re Anderson*, 471 F.2d 1237, 176 USPQ 331 (CCPA 1973). It has been repeatedly held that the written description requirement does *not* require an applicant to describe *exactly* the subject matter claimed. Rather, the disclosure should be sufficient to allow one having ordinary skill in the art to recognize that Applicant invented what is now claimed. *Union Oil Co. of California v. Atlantic Richfield Co.*, 208 F.3d 989, 54 USPQ2d 1227 (Fed. Cir. 2000); *In re Gosteli*, 82 F.2d 1008, 10 USPQ2d 1614 (Fed. Cir. 1989).

Based upon the foregoing, as the concept of implementing a voltage controlled oscillator is readily disclosed in the specification and embodied in the rejected claims, it should be apparent that one having ordinary skill in the art would have no difficulty practicing the claimed invention *armed with the supporting specification* without undue experimentation. *In re Brana*, *supra*; *In re Marzocchi*, *supra*. Applicant, therefore, respectfully submits that the rejection of claims 56 and 69 under the first paragraph of 35 U.S.C. §112 for lack of adequate enabling support is not factually supported, and requests that the rejection be withdrawn.

III. The Rejection Of Claims 5, 13-16, 21, 30-33, 38 and 46-49 Under 35 U.S.C. § 112, Second Paragraph

Claims 5, 13-16, 21, 30-33, 38 and 46-49 are rejected under 35 U.S.C. §112, second paragraph as being indefinite. Specifically, in the statement of rejection, the Examiner identified various basis perceived to render the claimed invention indefinite. This rejection is respectfully traversed.

Applicant : Shafiq M. Jamal et al.
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 20 of 30

Attorney's Docket No.: MP0430 / 13361-083001

Indefiniteness under the second paragraph of 35 U.S.C. §112, similar to the rejection cited against claims 56 and 69, is *a question of law, not form.* *Personalized Media communications LLC v. U.S. International Trade Commission*, 161 F.3d 696, 48 USPQ2d 1880 (Fed. Cir. 1998); *Tillotson, Ltd v. Wlaboro Corp.*, 831 F.2d 1033, 4 USPQ2d 1450 (Fed. Cir. 1987); *Orthokinetics Inc. v. Safety Travel Chairs Inc.*, 806 F.2d 1565, 1 USPQ2d 1081 (Fed. Cir. 1986).

Accordingly, in rejecting a claim under the second paragraph of 35 U.S.C. §112, the Examiner must provide a basis and fact and/or cogent technical reasoning to support the ultimate legal conclusion that one having ordinary skill in the art, with the supporting specification in hand, would not be able to reasonably ascertain the scope or protection defined by a claim. *In re Okuzawa*, 537 F.2d 545, 190 USPQ 464 (CCPA 1976).

Significantly, consistent judicial precedent holds that reasonable precision in light of the particular subject matter involved is all that is required by the second paragraph of 35 U.S.C. §112. *Zoltek Corp. v. United States, supra*; *Miles Laboratories, Inc. v. Shandon, Inc.*, 997 F.2d 870, 27 USPQ2d 1123 (Fed. Cir. 1993); *North American Vaccine, Inc., v. American Cyanamid Co.*, 7 F.3d 1571, 28 USPA2d 1333 (Fed. Cir. 1993); *U.S. v. Teletronics Inc., supra*; *'Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 USPQ (Fed. Cir. 1986). Applicants stress that claims must be interpreted as one having ordinary skill in the art would have interpreted the claims in light of and consistent with the supporting specification. *Zoltek Corp. v. United States, supra*; *Miles Laboratories, Inc. v. Shandon, Inc., supra*.

Applicant : Shafiq M. Jamal et al..
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 21 of 30

Attorney's Docket No.: MP0430 / 13361-083001

Applying the above legal rules, Applicant respectfully submits that the Examiner did not discharge the initial burden of providing a basis in fact and/or cogent technical reasoning to support the ultimate legal conclusion that one having ordinary skill in the art would not be able to ascertain the scope of protection defined by the claims, when reasonably interpreted in light of and consistent with the supporting specification.

Indeed, the Office Action has not explained or provided details why one having ordinary skill in the art would have been confused as to the scope of the claims when reasonably interpreted in light of and consistent with the written description of the specification. It should be noted that each of claims 5, 14, 21 and 38 does *not* define two identical output voltages. Rather, these claims recite an "output voltage" and a "*consistent* output voltage." It is respectfully submitted that these output voltages are *separate and distinct*, as expressly acknowledged and recognized by the Examiner; namely, "one ...associated with the charge pump while the other appears to be associated with the load output." As the claims would be readily understandable by one of skill in the art, it is respectfully submitted that the foregoing claims are in compliance with the requirements of 35 U.S.C. § 112, 2nd paragraph.

With respect to claims 13-16, the Examiner asserts that "claim 13 is seen to disconnect all but one charge pump from the lone current mirror to accommodate multiple additional respective current mirrors."

Although Applicant does not agree with such interpretation, in an effort to advance prosecution, claim 13 has been amended to recite "each current mirror [is] operable to provide a

Applicant : Shafiq M. Jamal et al..
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 22 of 30

Attorney's Docket No.: MP0430 / 13361-083001

constant current to a corresponding load circuit and suppress noise from a corresponding output voltage of one or more of the first charge-pump or one or more of the second charge-pumps."

With respect to claim 30, Applicant respectfully submits that this claim does not recite a first or a second charge pump. Accordingly, the rejection to claim 13 does not appear to be applicable to claim 30 and its dependent claims.

Even assuming that the rejections to claims 30-33 are proper, it should be noted that claim 26, for which claim 30 is dependent upon via claim 28, recites *a plurality of charge-pump means*, and claim 30 recites a suppression means including *a plurality of current mirrors*, each of which suppresses noise from an output voltage of a *corresponding* charge pump means.

Thus, it is respectfully submitted that claim 30 does not recite a "lone current mirror (i.e., a single current mirror)" so that the conclusion that "... all but one charge pump [are disconnected] from the lone current mirror ..." is factually inaccurate, and that each of the current mirrors recited in claim 30 can suppress a corresponding charge-pump means recited in claim 26.

With respect to claim 46, Applicant respectfully submits that this claim does not recite a first or a second charge pump. Accordingly, similar to claim 30, the rejection to claim 13 does not appear to be applicable to claim 46 and its dependent claims. This is further supported by the fact that claim 46 only recites providing *a plurality of current mirrors* operable to supply a relatively constant current to a plurality of load circuits, and does not recite any express relationship with the plurality of charge-pumps recited in claim 42.

Applicant : Shafiq M. Jamal et al.
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 23 of 30

Attorney's Docket No.: MP0430 / 13361-083001

If the pending rejection is maintained, it is respectfully requested that the issues with respect to claims 46-49 be identified so as to afford the Applicant an opportunity to further address the indefinite rejection.

For all of the foregoing reasons, it is apparent that one having ordinary skill in the art would have no difficulty understanding the scope of the claimed invention, particularly when reasonable interpreted in light of the supporting specification as required by consistent judicial precedence. *In re Okuzawa*, 537 F.2d 545, 190 USPQ 464 (CCPA 1976); *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); *In re Moore*, 439 F.2d 1232, 169 USPQ 236 (CCPA 1971). Applicant, therefore, respectfully submits that the rejection of claims 5, 13-16, 21, 30-33, 38 and 46-49 under the second paragraph of 35 U.S.C. §112 has been overcome, and the withdrawal thereof is requested.

IV. The Rejection Of Claims 5-7, 21-23 and 38-40 Under 35 U.S.C. § 102

Claims 5-7, 21-23 and 38-40 are rejected under 35 U.S.C. § 102(b) as being anticipated by USP No. 6,856,204 to Kwon. Applicant respectfully traverses this rejection for at least the following reasons.

Claim 5, as amended, recites in-part a charge-pump that is directly coupled to a current mirror.

As acknowledged by the Examiner during the interview conducted on July 20, 2005, Applicant respectfully submits that claim 5 is patentably distinct over Kwon. Indeed, as is evident, the charge pump 421 of Kwon is directly coupled to the loop filter 431, and the output of the loop filter 431 is merely fed to the operational amplifier 533 (and first and second

Applicant : Shafiq M. Jarnal et al.
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 24 of 30

Attorney's Docket No.: MP0430 / 13361-083001

comparison units 511/512), so that neither the charge pump 421 nor the output of loop filter 431 is directly coupled to the current mirror 541 of the voltage controlled oscillation unit 441.

Accordingly, it is respectfully submitted that Kwon does not disclose or suggest a charge-pump that is directly coupled to a current mirror, as recited in amended claim 5.

With respect to claim 6, this claim requires that a charge-pump be *directly coupled* to a current mirror. For at least the same reasons set forth above with respect to claim 5, it is respectfully submitted that claim 6 is allowable over the cited prior art.

With respect to claim 7, this claim requires that a charge-pump be *directly coupled* to a current mirror. For at least the same reasons set forth above with respect to claim 5, it is respectfully submitted that claim 7 is allowable over the cited prior art.

With respect to claim 21, this claim requires that a supply means be *directly coupled* to a suppression means. For at least the same reasons set forth above with respect to claim 5, it is respectfully submitted that claim 21 is allowable over the cited prior art.

With respect to claim 22, this claim requires that a supply means be *directly coupled* to a suppression means. For at least the same reasons set forth above with respect to claim 5, it is respectfully submitted that claim 22 is allowable over the cited prior art.

With respect to claim 23, this claim requires that a supply means be *directly coupled* to a suppression means. For at least the same reasons set forth above with respect to claim 5, it is respectfully submitted that claim 23 is allowable over the cited prior art.

With respect to claim 38, this claim recites suppressing a noise component with a suppression apparatus in an output voltage ... including *directly coupling* a supply apparatus

Applicant : Shafiq M. Jamal et al.
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 25 of 30

Attorney's Docket No.: MP0430 / 13361-083001

with a suppression apparatus. For at least the same reasons set forth above with respect to claim 5, it is respectfully submitted that claim 38 is allowable over the cited prior art.

With respect to claim 39, this claim recites suppressing a noise component with a suppression apparatus in an output voltage ... including *directly coupling* a supply apparatus with a suppression apparatus. For at least the same reasons set forth above with respect to claim 5, it is respectfully submitted that claim 39 is allowable over the cited prior art.

With respect to claim 40, this claim recites suppressing a noise component with a suppression apparatus in an output voltage including *directly coupling* a supply apparatus with a suppression apparatus. For at least the same reasons set forth above with respect to claim 5, it is respectfully submitted that claim 40 is allowable over the cited prior art.

Accordingly, as anticipation under 35 U.S.C. § 102 requires that each element of the claim in issue be found, either expressly described or under principles of inherency, in a single prior art reference, *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 218 USPQ 781 (Fed. Cir. 1983), and at a minimum, Kwon fails to disclose or suggest the foregoing claimed feature(s), it is respectfully submitted that Kwon does not anticipate claims 5-7, 21-23 and 38-40, or any of the claims dependent thereon.

V. **The Rejection Of Claims 9-16, 26-33, 42-49, 50-62, 67-69, 72-76, 78, 80, 82-84 and 86 Under 35 U.S.C. § 103**

Claims 9-16, 26-33, 42-49, 50-62, 67-69, 72-76, 78, 80, 82-84 and 86 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kwon in view of USP No. 5,767,735 to Javanifard. Applicant respectfully traverses this rejection for at least the following reasons.

Applicant : Shafiq M. Jamal et al.
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 26 of 30

Attorney's Docket No.: MP0430 / 13361-083001

Claim 9, as amended, recites in-part that at least one of the first and second charge-pumps is *directly coupled* to a current mirror.

In contrast, as discussed *supra*, the charge pump 421 of Kwon is directly coupled to the loop filter 431, and the output of the loop filter 431 is merely fed to the operational amplifier 533 (and first and second comparison units 511/512), so that neither the charge pump 421 nor the output of loop filter 431 is directly coupled to the current mirror 541 of the voltage controlled oscillation unit 441.

Javanifard does not cure this defect of Kwon, because Javanifard does not disclose or suggest any current mirror. Specifically, while Javanifard may arguably show multiple pump stages, none of which are directly connected to a current mirror.

Accordingly, Applicant respectfully submits that Kwon and Javanifard, taken alone or in combination, do not disclose or suggest that at least one of the alleged first and second charge-pumps is directly coupled to the current mirror, as required in claim 9.

With respect to claim 26, this claim recites in-part a supply means that is *directly coupled* to a suppression means. As this claim has been rejected under the same arguments raised in the rejection to claim 9, Applicant respectfully submits that Kwon and Javanifard, taken alone or in combination, do not disclose or suggest a supply means that is directly coupled to a suppression means for analogues reasons discussed with respect to claim 9.

With respect to claim 42, this claim recites in-part a supply apparatus that is *directly coupled* to a suppression apparatus. As this claim has been rejected under the same arguments raised in the rejection to claim 9, Applicant respectfully submits that Kwon and Javanifard, taken

Applicant : Shafiq M. Jamal et al..
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 27 of 30

Attorney's Docket No.: MP0430 / 13361-083001

alone or in combination, do not disclose or suggest a supply apparatus that is directly coupled to the suppression apparatus for analogous reasons discussed with respect to claim 9.

With respect to claim 50, the Examiner asserts that this claim is "seen as merely an intended use of the present invention."

However, it is respectfully submitted that claim 50 does not recite an intended use of a transceiver, but defines the distinct properties/characteristics of the various structural elements being claimed. In other words, the recited transceiver defines the actual structural configuration comprising the claimed elements, rather than identifies an intended use of these elements. Indeed, claim 50 expressly describes the arrangement/position of each of the transmitter, receiver, charge-pump, current mirror and voltage regulator, and does not merely recite an intended use of each of the foregoing elements.

If the pending rejection is maintained, it is respectfully requested that the next Office Action identify how the elements recited therein are interpreted as "intended use" of the present invention so as to afford the Applicant an opportunity to address this issue.

Furthermore, the Examiner is directed to M.P.E.P § 2143.03 under the section entitled "All Claim Limitations Must Be Taught or Suggested," which sets forth the applicable standard:

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. (emphasis added) (citing *In re Royka*, 180 USPQ 580 (CCPA 1974)).

In the instant case, the Examiner admits that the *prior art* (i.e., Kwon) does not teach or suggest all of the claim limitations but nonetheless rejects the claims. It is respectfully submitted that the statement "... those of ordinary skill in the art are quite well aware that Ethernet transmitters/receivers (like most any other modern electronic devices) require reliable voltage

Applicant : Shafiq M. Jamal et al..
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 28 of 30

Attorney's Docket No.: MP0430 / 13361-083001

and frequency references (see, page 6, 4th paragraph of Office Action" as a prelude to the rejection is not a proper basis for rejecting the pending claims, as this statement is directed to an *opinion* rather than what is taught by the prior art. It is submitted that an opinion can not be relied on to replace the deficiency of a prior art reference. If it is intended to take Official Notice that the differences between the cited prior art and the present invention as recited in claim 50 are well-known in the art, then pursuant to M.P.E.P § 2144.03, Applicant respectfully traverses such an assertion and requests the next Office Action to cite a reference in support of this position (see second paragraph, last three lines of M.P.E.P § 2144.03, which requires the Examiner to cite a reference in support of his allegation of Official Notice when Applicants traverse).

Furthermore, in an effort to advance prosecution, claim 50 has been amended to recite a charge-pump that is directly coupled to a current mirror. As discussed above, the charge pump 421 of Kwon is directly coupled to the loop filter 431, and is not directly coupled to the voltage controlled oscillation unit 441 and VCO range shift unit 451. Javanifard does not cure this defect of Kwon, because Javanifard does not disclose or suggest any current mirror, let alone a connection as specified in claim 50.

Accordingly, Applicant respectfully submits that Kwon and Javanifard, taken alone or in combination, do not disclose or suggest a charge-pump that is *directly coupled* to a current mirror, as required in claim 50.

With respect to claims 67-69, 72 and 76, as each of these claims also expressly defines the distinct properties/characteristics of the various structural elements being claimed, it is

Applicant : Shafiq M. Jamal et al..
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 29 of 30

Attorney's Docket No.: MP0430 / 13361-083001

respectfully submitted that these claims do not merely recite an intended use of each of the foregoing elements.

Additionally, in an effort to advance prosecution, similar to claim 50, these claims have been amended to recite a supply means that is *directly coupled* to a noise suppression means. For reasons already discussed above with respect to claim 50, Applicant respectfully submits that Kwon and Javanifard, taken alone or in combination, do not disclose or suggest this limitation recited in claims 67-69, 72 and 76.

As each and every limitation must be either disclosed or suggested by the cited prior art in order to establish a *prima facie* case of obviousness (see, M.P.E.P. § 2143.03), and the combination of Kwon and Javanifard fails to do so, it is respectfully submitted that claims 9, 26, 42, 50, 67-69, 72 and 76 are patentable over the cited prior art.

VI. All Dependent Claims Are Allowable Because The Independent Claims From Which They Depend Are Allowable

Under Federal Circuit guidelines, a dependent claim is neither anticipated nor rendered obvious if the independent claim upon which it depends is allowable because all the limitations of the independent claim are contained in the dependent claims, *Hartness International Inc. v. Simplimatic Engineering Co.*, 819 F.2d at 1100, 1108 (Fed. Cir. 1987). Accordingly, as independent claims 5-7, 9, 21-23, 26, 38-40, 42, 50, 67-69, 72 and 76 are patentable for the reasons set forth above, it is respectfully submitted that all claims dependent thereon are also in condition for allowance.

Applicant : Shafiq M. Jamal et al..
Serial No. : 10/802,364
Filed : March 16, 2004
Page : 30 of 30

Attorney's Docket No.: MP0430 / 13361-083001

VII. Conclusion

Accordingly, it is urged that the application is in condition for allowance, an indication of which is respectfully solicited.

If there are any outstanding issues that might be resolved by an interview or an Examiner's amendment, the Examiner is requested to call Applicant's attorney at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. A submission of Credit Card Payment Request authorizing payment of \$120.00 for the extension of time fee is attached. Please apply any other required fees or any credits to deposit account 06-1050, referencing the attorney docket number shown above.

Respectfully submitted,

Date: 12-19-05


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